

REMARKS

Applicant has carefully reviewed the Application in light of the Office Action mailed October 18, 2006. At the time of the Office Action, Claims 1-43 were pending in the Application. Applicant respectfully requests reconsideration of the pending claims and favorable action in this case.

Section 101 Rejection

The Examiner rejects Claims 34 and 35 under 35 U.S.C. § 101 proposing that the claimed invention is directed to non-statutory subject matter. Independent Claim 34 recites: "a computer-readable medium that stores said computer code." It is well established that "a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships...and is thus statutory." MPEP § 2106(IV)(B)(1)(a). Because Claim 34 recites a "a computer-readable medium that stores said computer code," Independent Claim 34 recites statutory subject matter. For at least this reason, Applicant respectfully requests reconsideration and allowance of Independent Claim 34. Additionally, the corresponding dependent claims from Independent Claim 34 also recite statutory subject matter for analogous reasons.

Section 103 Rejection

The Examiner rejects Claims 1-15, 18-34, 36-41 and 43 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Publication No. 2003/0219029 issued to Pickett (hereinafter "*Pickett*") in view of U.S. Patent No. 6,714,534 issued to Gerzberg et al. (hereinafter "*Gerzberg*"). The Examiner rejects Claims 16-17, 35 and 42 under 35 U.S.C. § 103(a) as being unpatentable over *Pickett* in view of *Gerzberg* and further in view of U.S. Patent 4,839,640 issued to Ozer et al. ("hereinafter *Ozer*"). This rejection is respectfully traversed for the following reasons.

Applicant respectfully submits that the combination fails to disclose, teach, or suggest each limitation recited in Applicant's claims. The Examiner first opines that *Pickett* discloses a system having a component for "accepting packets in response to a power failure," but then concedes that *Pickett* does not disclose "*selectively* accepting packets in response to a power

failure.” *Office Action*, p. 5 (emphasis added). The Examiner then relies on *Gerzberg* for the disclosure of a system that “selectively” accepts packets in response to a power failure. *Office Action*, p. 5.

More particularly, the Examiner cites the text of paragraph [0379] on page 41¹ of *Pickett* as support for the proposition that *Pickett* discloses a system having a component for “accepting packets in response to a power failure.” Contrary to the Examiner’s conclusion, though, this passage does not disclose this aspect of the claimed invention. Paragraph [0379] teaches only a system that prioritizes the *transmission* of packets to optimize QoS. Paragraph [0379] makes no disclosure related to *accepting* packets, nor does it discuss taking *any* action in response to a power failure.

The Examiner’s reliance on *Gerzberg* is equally misplaced. *Gerzberg* does not disclose, teach, or suggest “selectively accepting packets in response to a power failure.” The Examiner refers to column 7, lines 48-68 and column 8, lines 1-12 in support of his rejections, but the concept of selectively accepting packets in response to a power failure is foreign to these references. Instead, *Gerzberg* provides for a redundant switchable coupler serving as a “lifeline” that provides power and service to a telephone device if the cable television tap is being serviced or repaired. [See Col. 7, ll. 53-59.] Therefore, *Pickett* and *Gerzberg*, alone or in combination, fail to disclose, teach, or suggest at least one limitation of the Applicant’s claims. Accordingly, Applicant respectfully requests reconsideration and allowance of Independent Claim 1 and its dependents.

Independent Claims 24, 34, 36, and 37 each recite certain limitations that, for reasons substantially similar to those discussed with reference to Independent Claim 1, *Pickett* and *Gerzberg*, alone or in combination, do not disclose, teach, or suggest. Therefore, Applicant respectfully requests reconsideration and allowance of Independent Claims 24, 34, 36, and 37 together with their dependents for analagous reasons.

¹ The Office Action mistakenly identifies this text as “column 41 lines 1-10,” but the Examiner clarified this citation during a brief telephone call on April 20, 2006.

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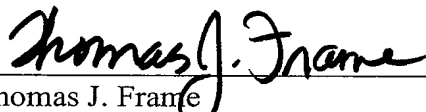
CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for all other reasons clear and apparent, Applicant respectfully requests reconsideration and allowance of the pending claims.

Applicant believes no fee is due. However, if this is not correct, the Commissioner is hereby authorized to charge any additional amount required or credit any overpayment to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

If there are matters that can be discussed by telephone to advance prosecution of this application, Applicant invites the Examiner to contact its attorney, Thomas J. Frame, at (214) 953-6675.

Respectfully submitted,
BAKER BOTTS L.L.P.
Attorneys for Applicant



Thomas J. Frame
Reg. No. 47,232

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Customer No. 05073